tradition distinctions, such as between voice and data services and between one-way and two-way services are collapsing.[11]

Given the market overlap of paging-only carriers and other CMRS providers, and the LECs themselves, the Commission cannot here award compensation only to the two-way voice segment of the wireless industry, however defined. To do so would artificially competitively advantage the carriers who provide paging along with two-way voice services to the detriment of those carriers who provide stand-alone paging service.

To illustrate, under a bill and keep arrangement, there is an assumption that the traffic originated on the LEC's network and the CMRS carrier's network is roughly the same and, as such, it is easier for carriers to keep charges billed to their own end users for origination and termination rather than exchange roughly equal payments. Under bill and keep, cellular and broadband PCS carriers are implicitly compensated for terminating their paging traffic (for mobile-to-land traffic) because the compensation the carrier would otherwise pay to the LEC is offset

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8026, 8028-8029, 8109 (1994) ("*Third CMRS Order*"). *See also Competition in the Commercial Mobile Services Market*, 78 RR2d 1322, 1334 (1995).

[11] *Id.*

by the compensation that the LEC would otherwise pay to the carrier. However, due to the one-way nature of paging traffic, bill and keep gives traditional paging carriers *no* compensation, even though they terminate the same type of traffic on their networks. This arrangement, which compensates broadband service providers -- but not paging-only carriers -- for call termination, is inherently anticompetitive, and violative of long-standing Commission precedent, the antidiscrimination provisions of the Communications Act of 1934 and the interconnection mandates found in the Telecommunications Act of 1996.[12]

Section 202(a) of the Communications Act of 1934 prohibits unreasonable discrimination against classes of customers. 47 C.F.R. § 202(a). This provision has been invoked, *inter alia*, to prohibit LEC pricing practices that established different rates for the same service offered to news agencies and other

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[12] This concern is not academic and is not limited to discrimination that would result from the imposition of bill and keep for all CMRS providers. New York Telephone, acting pursuant to the dictates of the New York Service Commission, established a compensation schedule for two-way cellular traffic. PageNet includes materials from NYNEX that announce the compensation arrangements as in attached Appendix B. Despite PageNet's requests for comparable treatment, NYNEX has refused to extend this compensation arrangement to paging carriers in its territory.

customers,[13] and the disparate allocation of NXX codes by LECs to cellular carriers. Similarly, a compensation scheme that provided termination compensation to two-way CMRS providers through bill and keep, but no compensation to paging carriers would violate the letter and spirit of the Telecommunications Act of 1996. In establishing interconnection standards for non-CMRS carriers, the Act repeatedly prohibits discrimination in the rates, terms and conditions of interconnection.[14] These provisions clearly indicate the intent of Congress that discrimination must similarly be prohibited in the context of CMRS interconnection. In light of this precedent and legislative mandate, the Commission is required to establish fully compensatory interconnection rules governing interconnection arrangements involving paging carriers. PageNet proposes such a fully compensatory pricing structure in Section IV, *infra*.

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13 *See Hi-Lo Interim Decision*, 55 FCC 2d 224 (1975); *Hi-Lo Decision*, 58 FCC 2d 362 (1976).

14 *E.g.*, 47 C.F.R. §§ 251(b); 251(C)(2)(C)&(D); 252(d)(1)(A)(ii) (1995).

D. Paging Carriers, Like Other CMRS Carriers, Are Co-Carriers With The LECs And Are Entitled To Reasonable Interconnection And Compensation For The Termination Of Traffic

1. Paging Carriers Are Co-Carriers With The LECs

Although it is obvious and has been a basic tenet of the Commission's interconnection policy,[15] it is important for the Commission to begin its consideration of compensation for traffic termination by paging carriers from the established fact that paging carriers and LECs are co-carriers. The Commission has already determined that paging carriers are co-carriers, having found that they are "common carriers generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone exchange companies."[16] As co-carriers, paging carriers are entitled to reasonable interconnection for

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[15] The Commission's policy regarding interconnection for mobile services such as paging and cellular are well established. *See Allocation of Frequencies in 150.8-162 Mc/S Band*, 12 FCC 2d 841 (1968), *recon. denied*, 14 FCC2d 269, *aff'd sub nom.*, *Radio Relay Corp. v. FCC*, 409 F.2d 269 (2nd Cir., 1969); *Cellular Communications Systems*, 86 FCC 2d 469, 495-496 (1981); *Cellular Communications Systems*, 89 FCC 2d 58, 80-82 (1982); *Cellular Communications Systems*, 90 FCC 2d 571, 576-577 (1982); *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2915 (1987); and *Implementation Of The Regulatory Treatment Of Mobile Service, Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1497-1498 (1994)("*Second CMRS Order*").

[16] *Radio Common Carrier Services (Post-Divestiture BOC Practices)*, 59 RR2d 1275, 1278 (1986).

the services that they provide.[17] As discussed below, one component of "reasonable interconnection" is compensation for call termination.

2. Compensation For Termination Of Calling Traffic Is Mandated By The Statute And The Commission's Rules

In the Omnibus Budget Reconciliation Act of 1993, Congress directed that the Commission shall, upon reasonable request of any person providing commercial mobile radio service, order a common carrier to establish physical connection with such service pursuant to the provisions of 47 U.S.C. § 201.[18] This requirement of reasonable interconnection for CMRS providers is codified in the Communications Act of 1934, as amended, under Section 332(c)(1)(B).[19]

In the *Second CMRS Order*, the Commission classified paging as CMRS[20] and determined that paging carriers, as CMRS providers, are entitled to reasonable interconnection. In reaffirming its existing interconnection standard in that *Order*, the Commission found that the obligation to provide reasonable interconnection

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17 *Id.*

18 Omnibus Budget Reconciliation Act of 1993, P.L. No. 103-66, Title VI, § 6002(c)(1)(B) 107 STAT. 312, 393 (1993) ("Budget Act").

19 47 U.S.C. § 332(c)(1)(B) (1995).

20 *Second CMRS Order*, 9 FCC Rcd at 1452-1462.

extended to CMRS providers.[21] Additionally, in the *Second CMRS Order*, the Commission stated that a requirement of reasonable interconnection was mutual compensation for traffic termination.[22]

Under this requirement, the LECs must compensate CMRS providers for the reasonable costs incurred by CMRS providers in terminating traffic that originates on the LEC's network.[23] This requirement is codified under Section 20.11 of the Commission's Rules, which states:

> (b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.
>
> (1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

CMRS providers are, therefore, clearly entitled to mutual compensation, perhaps more appropriately called "termination compensation."[24] Termination compensation is compensation for

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21 *Id.* at 1497-1498.

22 *Id.* at 1498. *See also*, 47 C.F.R. § 20.11 (1995).

23 *Id.*

24 The term "mutual compensation" is a misnomer. The real issue is *terminating compensation*, i.e., that a carrier incurs -- and must be compensated for -- costs for the termination of someone else's traffic, and thereby becomes eligible for terminating compensation. However, one state, Connecticut, has ruled that paging carriers are not entitled

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the costs of terminating calling traffic that originates on another carrier's network. As CMRS carriers, paging carriers are entitled to compensation for terminating traffic that originates on another carrier's network.

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to mutual compensation in part because there is no mutuality of traffic between the paging carrier and the LEC. The Connecticut Department of Public Utility Control also denied compensation to wireless carriers on the basis that such carriers were not subject to its jurisdiction because their services were not substitutable for local exchange service. *See State of Connecticut, DPUC Investigation Into Wireless Mutual Compensation Plans,* Docket No. 95-04-04 (Sept. 22, 1995). This argument is a fiction because no matter whether the paging carrier's network originates traffic or not, the paging carrier incurs costs in the termination of traffic. Under any reasonable interconnection standard, the paging carrier is entitled to compensation for that termination.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS

A. Compensation Arrangements

1. Existing Compensation Arrangements: Currently Effective Compensation Arrangements Either Do Not Exist Or Are Inconsistent With Commission Policy And The Communications Act As Revised, And Discriminate Against Paging Carriers.

PageNet has attempted to negotiate reasonable interconnection arrangements with all of the Bell Operating Companies, most of the large independent LECs, and several IXCs. Because PageNet lacks bargaining leverage in its negotiations with the LECs, and because the existing interconnection arrangements were established primarily without Commission oversight, the rates and terms of PageNet's interconnection arrangements vary greatly from LEC to LEC, and even from city to city within the same LEC's service area.

PageNet includes the Affidavit of Vic Jackson, attached as Appendix C, which provides a comparative summary of the various PageNet interconnection arrangements currently in effect. As the Affidavit shows, the arrangements reflect extreme and wholly unjustified variations in pricing for identical interconnection components. For example, Centel Ameritech, U S West, Bell Atlantic, SNET, Southwestern Bell and BellSouth impose a single flat rate per trunk. These charges vary by as much as 50% from LEC to LEC. Pacific Bell, New England Telephone and GTE impose a similar flat per-trunk rate that is equivalent to those of the other LECs, but these carriers also impose *an additional* per-minute of use ("MOU") charge for LEC-originated traffic carried on the trunk. In other words, some LECs want the paging carrier to pay for the "privilege" of terminating LEC-originated traffic! The per-MOU charges differ literally by hundreds of percent from LEC to LEC. As a result of these highly disparate rate schemes, PageNet's access charges vary by orders of magnitude from LEC to LEC, even though they provide identical service in most instances.

In a telling contrast to these pricing practices, however, in interconnection tariffs filed by New York Telephone[25] and new interconnection proposals made by Ameritech, these LECs agreed to provide the transport link between their tandem switch and PageNet's MTSO without charge to PageNet. These LECs concede that the transport link is already paid for by the rates paid by the originating end user or the IXC that handles the traffic. (Of course, if the transport links are paid for in New York Telephone's and Ameritech's case, they are recovered in the

[25] The discrepancies in LEC interconnection practices also exist from state to state within a single LEC's region: New York Telephone has agreed not to impose access charges for the central office/MTSO link in New York, but New England Telephone has refused to provide a similar arrangement to PageNet in Massachusetts. Clearly, there is no reasonable basis for this disparity in NYNEX's interconnection policy.

charges of all of the other LECs as well. Thus, the compensation arrangements for identical LEC facilities runs the gamut from no charge to the paging carrier for the intercarrier trunk, to a flat rate, to a combined flat rate for the trunk plus an origination usage charge.[26]

The enormous variability in these interconnection rates makes clear that: (1) there is no rational or factual basis for these rates, and the LECs are simply using their dominant position to extract monopoly rents from PageNet and other paging carrier; (2) the overall level of compensation demanded by these LECs is grossly excessive and patently anticompetitive; (3) the LECs that impose charges for the link between the LEC switch and the MTSO are double charging; and (4) the LECs that impose both flat rates and usage-based rates for this link are *triple charging*.

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[26] Similarly, as shown in the Jackson Affidavit, Ameritech has agreed to pay terminating compensation to PageNet for local traffic. This development constitutes an admission that PageNet's argument for terminating compensation is wholly justified. In regard to existing interconnection arrangements, however, PageNet notes that, while some LECs have taken steps toward establishing fair and fully compensatory interconnection arrangements, to date, none has done so. The Commission must implement the full interconnection compensation program proposed by PageNet in these comments in order to acknowledge paging carriers' co-equal status.

The Jackson Affidavit also identifies another bottleneck interconnection element that the LECs have exploited in order to extract monopoly rents -- the assignment of NXX codes. As the spreadsheets attached to the Affidavit show, LEC pricing practices for the establishment of NXX codes vary dramatically. NYNEX does not impose such a charge and Ameritech, while it has imposed a charge in the past, is now eliminating it. In contrast, most of the other Bell Operating Companies impose charges ranging from approximately $3,000 to over $9,000 for NXX establishment, with the most extreme case -- Pacific Bell -- imposing charges as high as *$30,500* These charges are wholly unsupported, and indeed are not supportable. Moreover, to the best of PageNet's knowledge, the LECs do not impose similarly high charges for NXX codes provided to other LECs or other wireline service providers. Thus, the LEC NXX rates appear to be both excessive and unreasonably discriminatory. The practices of NYNEX and Ameritech constitute clear evidence that the charges imposed by the other LECs are unreasonable. The Commission should therefore require that the other LECs eliminate their charges for NXX establishment.

Even a superficial review of the LEC pricing practices makes clear that the currently effective paging interconnection arrangements are patently unreasonable, wholly unsupported, excessive and unreasonably discriminatory. The Commission simply cannot allow these insupportable and highly anticompetitive practices to continue. Below, PageNet discusses the principles that should form the basis of a fair and reasonable compensation structure.

2. General Pricing Principles.

The NPRM posits that bill and keep is appropriate in two instances: 1) where traffic between two carriers is roughly in balance, or 2) where the costs of termination are *de minimis*.[27] Neither applies in the case of traffic terminated to a paging carrier. First, virtually all calls to paging subscribers originate on the LEC network and terminate on the paging carrier network. Second, as discussed in subsection 3(b), below, the paging carrier incurs significant costs in receiving and then setting up and switching the terminating traffic, and in transporting it to the paging end user. These costs are discussed in the Technical Memorandum of Jan David Jubon, attached as Appendix D. Clearly, then, in the case of paging services, bill and keep is not an appropriate surrogate for actual compensation paid by the LECs to the paging carriers.

In order to promote efficient interconnection, and to compensate all parties for the functions that they perform, the

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[27] NPRM at ¶ 61.

Commission's CMRS compensation rules should reflect the following:

1. The Commission must ensure that all parties receive fair compensation for the network functions that they provide.

2. The existing application of LEC charges to paging carriers must be reexamined in order to eliminate LEC double and triple recovery and to promote fair and efficient interconnection.

3. The Commission must adopt rules that can implement fair and efficient co-carrier arrangements immediately, and not perpetuate the distortions of interconnection terms established in the past.

PageNet discusses these factors in the context of its specific pricing proposals below.

3. Pricing Proposals: The Commission Must Adopt A Compensation Structure That Fairly Compensates Both LECs And Paging Carriers For The Functions That They Perform.

The structure of LEC/paging carrier interconnection/compensation arrangements must ensure that: (1) LECs do not charge paging carriers for transporting LEC-originated traffic[28] from the LEC network to the paging carrier's MTSO; and (2) the paging carrier is fairly compensated for terminating the traffic on its network. As PageNet discusses below, these principles

[28] "LEC originated traffic" must be read to include all traffic handed off from LEC facilities, and must not be limited to traffic originated by the LEC's directly-connected subscribing end user.

require the adoption of a compensation arrangement that: 1) ensures that the LEC does not over-recover charges associated with the inter-carrier link between the LEC switch and the paging carrier MTSO, and 2) provides immediate and full compensation to the paging carrier for the call set up, switching and transport functions that it performs.

a. The Commission Must Ensure That LECs Compensate Paging Carriers For Terminating LEC-Originated Traffic On The Paging Network.

The NPRM observes that the Commission in 1987 established the principle of termination compensation for CMRS providers: "This principle requires LECs to compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities."[29] The Telecommunications Act of 1996 reiterates this determination, repeatedly stating the Congressional intent that competitive carriers should be compensated for traffic that is terminated over their networks.[30] As discussed above, however, the Commission's proposed bill and keep solution does not work for

[29] NPRM at ¶20 (citing *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2915 (1987)).

[30] Act at §§ 251(a)(5) & 252(d)(2)(A)(i) (1995). To the extent that paging carriers in the future original traffic that terminates on the LEC networks, PageNet anticipates paying reasonable compensation to the LEC.

paging-only carriers because of the predominantly one-way nature of paging traffic As a result, and as discussed below, the Commission must mandate actual terminating compensation for paging carriers.

b. Compensation On An Interim Basis Should Be Based On Existing LEC Cost Elements.

PageNet is concerned that the *de novo* prescription of compensation rates would result in unreasonable delay, and would continue to deny paging carriers effective interconnection for an extended period of time. This concern is especially compelling in light of the 1996 Act's requirement that the Commission complete over 80 rulemaking proceedings over the next two years. This mandate places an enormous burden on Commission resources, and makes it highly unlikely that the Commission could complete a full rate investigation and prescribe effective termination compensation rates in a reasonably timely manner.

These concerns compel the use of existing LEC cost measures as a basis for establishing reasonable rates for the switching and transport functions that paging carriers perform.[31] The use

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[31] PageNet reiterates that this approach is necessary because bill and keep arrangements fail to provide paging carriers with any compensation terminating the one-way paging traffic. Reference to LEC costs may not be appropriate or necessary for establishing interconnection rates for other CMRS providers.

of LEC costs for local switching and local transport to establish the compensation levels of LEC traffic terminated over paging carriers' networks will permit the Commission to establish reasonably compensatory rates without inordinate delay.

Reference to the LECs' costs is appropriate for a number of reasons. First, the functions performed by the paging carriers' switching and transport facilities are functionally equivalent to the functions reflected in the LEC's local switching and transport charges. See Jan David Jubon Technical Memorandum at Appendix D. Second, it is reasonable to presume that rates established for paging carriers through this practice will be just and reasonable, at least on an interim basis.

Finally, reliance upon tariffed LEC rates to establish a ceiling for services of competitive carriers is a practice that has long been used by the Commission. The expectation that dominant carrier rates would establish a market cap was the underpinning of the Commission's forbearance policy for almost two decades, and supported the Commission's determination that nondominant carriers need not file tariffs.[32] In the case of

[32] *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed
Continued on following page

operator service providers, the Commission prescribed the rates of AT&T as a cap for the industry.[33] Thus, the proposal to establish LEC tariffed rates for local switching and transport as an interim compensation level for paging carriers is well supported by established precedent and would allow the Commission to establish reasonable compensation levels immediately.

For all of the reasons discussed above, PageNet urges the Commission to adopt the termination compensation system discussed herein, at least as an interim solution. A detailed discussion of appropriate compensation rates for paging carriers is found in Section IV, *infra*, and in the attached Memorandum of the Drazen Consulting Group, at Appendix E. Such action would implement a

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Rulemaking, FCC No. 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982), *recon.*, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983), *vacated, AT&T v. FCC,* 987 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T,* ___ US ___, 113 S.Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984), *recon.*, 59 RR2d 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985), *rev'd, MCI Telecommunications Corp. v. FCC,* 765 F.2d 1186 (D.C. Cir. 1985)(collectively known as *Competitive Carrier Decisions*).

[33] *See generally,* Oncor Communications, Inc., 77 RR2d 1310 (Com.Car.Bur. 1995).

reasonably compensatory program immediately to replace the patently unreasonable, discriminatory, and anticompetitive arrangements that currently exist. Moreover, the Commission and industry will retain the ability to pursue a full ratemaking proceeding to determine if different rates should be prescribed at a future date.

B. Implementation Of Compensation Arrangements.

1. Jurisdictional Issues: The Commission Has Plenary Jurisdiction Over CMRS Call Termination Rates For Interconnection With The LECs.

The Telecommunications Act of 1996 confirms that the Commission has plenary and exclusive jurisdiction over the rates charged by CMRS providers to terminate traffic originating from LECs and other co-carriers. Section 253(e) expressly preserves the removal of state jurisdiction over CMRS interconnection agreements under Section 332(c)(3) of the Communications Act of 1934 (as amended by the Omnibus Budget Reconciliation Act of 1993). Further, eliminating any uncertainty over the Commission's authority to occupy the field, Section 251(d) provides that the Commission "shall complete all actions necessary to establish regulations to implement" the interconnection and other provisions in Section 251 of the new legislation.

a. Preemption of State Jurisdiction.

In the Omnibus Budget Reconciliation Act of 1993, Congress amended Section 332 of the Communications Act to provide that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service." 47 U.S.C. § 332(c)(3). This categorical language removes all state jurisdiction over CMRS rates, including the rates charged by CMRS providers to terminate traffic originated by LECs and other co-carriers.[34] In that same legislation, Congress amended Section 2(b) to provide that the Communications Act does not affect the states' retained jurisdiction over intrastate services "[e]xcept as provided in . . . Section 332." 47 U.S.C. § 152(b). That amendment clarifies that Congress removed from the states jurisdiction over rates and entry for both interstate and intrastate commercial mobile services.[35]

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[34] *See Florida Public Telecommunications Ass'n. v. F.C.C.*, 54 F.3d 857 (D.C. Cir. 1995).

[35] Under Section 332(c)(3), a state desiring to retain jurisdiction over CMRS rates was required to submit a petition to the Commission showing that (i) CMRS market conditions fail to protect consumers against unreasonable or discriminatory rates; or (ii) such market conditions exist for services serving as a substitute for landline local exchange services. By spelling out in detail how a state can obtain jurisdiction over CMRS rates, this provision confirms that Congress intended to remove such authority in the first instance through Section 332(c)(3).

The removal of state authority over CMRS rates stemmed from Congress' recognition that uniform federal policies are necessary to promote the nationwide growth of mobile services. Congress acknowledged that by their nature, mobile services operate without regard to state jurisdictional boundaries.[36] In that environment, disparate state regulation of commercial mobile services could undermine the development of CMRS competition and the nation-wide build-out of a wireless infrastructure. Congress intended for mobile services to be subject to uniform rules,[37] and it logically selected the Commission to exercise plenary and exclusive jurisdiction over intrastate and interstate CMRS entry and rates.[38] Using that authority, the Commission could "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[39]

The Commission need not reach the question whether Section 332(c)(3) gives it exclusive jurisdiction over the rates charged

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[36] *See* H.R. Rep. No. 103-111, 103d Cong., 1st Sess. at 260 (1993) (Congress intended to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure").

[37] *Id.* at 259.

[38] *See* H.R. Rep. No. 103-213, 103d Cong., 1st Sess. at 497 (1993) (emphasizing amendment to 47 U.S.C. § 152(b) as "clarify[ing] that the Commission has the authority to regulate commercial mobile services").

[39] *Id.* at 490.

by LECs or other co-carriers to terminate traffic originated by paging carriers.[40] As noted above, paging traffic is one-way; it is all terminated by the paging companies. As a result, the question presented in this section is whether the Commission has jurisdiction over CMRS termination rates, and Section 332(c)(3) expressly answers that question in the affirmative.

The Commission's jurisdiction under Section 332(c)(3) extends to the outrageous but common LEC practice of charging paging companies for traffic which *the paging companies* terminate and for which the LECs otherwise receive over-compensation from the rates they impose upon end-user callers. The Commission's jurisdiction over CMRS rates for terminating LEC-originated traffic necessarily extends to any attempt by LECs to impose rates upon paging companies for the exact same traffic. If the Commission has exclusive jurisdiction over the rates charged by CMRS providers to terminate LEC-originated traffic, then it has exclusive jurisdiction over efforts by LECs to collect fees from paging carriers for that same land-to-mobile terminating traffic.

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[40] In a previous decision, the Commission held that state regulation of interconnection rates for LEC wireline services was outside the scope of exclusive federal jurisdiction under Section 332(c)(3). *Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within The State of Louisiana*, 10 FCC Rcd 7898, 7908 (1995).

Such fees would operate as an offset against the CMRS provider's termination rates, and the Commission cannot regulate the latter effectively without regulating the former as well.

The Telecommunications Act of 1996 expressly confirms the Commission's plenary and exclusive jurisdiction over CMRS rates, including interconnection rates. Section 253 governs market entry and preemption, and subsection (e) provides that "[n]othing in this section shall affect the application of section 332(c)(3) to commercial mobile services providers." Further, by including this provision in the new legislation, Congress removed any doubt that the Commission's jurisdiction covers CMRS interconnection rates as well as retail rates charged by CMRS providers to end users. Were Section 332(c)(3) limited to retail rates alone, there would have been no need to insert subsection (e) into Section 253.[41] Therefore, Section 332(c)(3) of the Communications Act removes all state authority over entry and rates for the interstate and intrastate services of CMRS providers.

Finally, paging traffic is inherently interstate in nature, and this characteristic of the service requires that the

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[41] *See Russello v. United States*, 464 US 16, 23 (1983)(when Congress uses different language in different sections of a statute, it does so intentionally); *see also International Union, WMVA v. MSHA*, 823 F.2d 608 (DC Cir. 1987).

Commission exercise exclusive jurisdiction over it. Attached Diagram 1 illustrates the configuration of two of PageNet's regional hubs, which are characteristic of PageNet's network configuration nationwide. As Diagram 1 makes clear, a paging call on the PageNet network is transmitted simultaneously from a number of transmitters located in different states in order to provide regional or national coverage. Thus, a call originated in Washington, D.C. may be terminated over facilities located in New York, New Jersey, Philadelphia, the District of Columbia, Maryland, or Virginia. Because paging customers are itinerant by definition, it is impossible to determine the terminating party's location in advance. Because the paging call is broadcast simultaneously from facilities in different states, and because there is no practicable means of determining whether the party receiving the paging call will be in the state of origination or in another location, it is impossible to segregate intrastate and interstate paging calls. In such cases, the Commission must exercise plenary jurisdiction.[42] For all of the reasons discussed above, the Commission is fully empowered to exercise exclusive and plenary jurisdiction over all rates, terms and

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[42] *See Louisiana Pub. Ser. Comm'n v. FCC,* 476 US 355, 375 n.4 (1986). *See also California v. FCC,* 905 F.2d 1217 (9th Cir. 1990); *Illinois Bell Tel. v. FCC,* 883 F.2d 104 (D.C. Cir. 1989); *National Ass'n of Reg. Util. Comm'ners v. FCC,* 880 F.2d 422 (D.C. Cir. 1989).

conditions that establish interconnection between LEC and paging carrier networks.

DIAGRAM 1

ILLUSTRATIVE DIAGRAM OF PAGENET INTERSTATE NETWORK